

ATTACHMENT B

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Youthbuild Columbus Community School)	File No. SLD-370891
Columbus, Ohio.)	
)	
Schools and Libraries Universal Service Support)	CC Docket No. 02-6
Mechanism)	

ORDER

Adopted: January 14, 2011**Released: January 14, 2011**

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. We grant an appeal filed by Youthbuild Columbus Community School (Youthbuild) of a decision of the Universal Service Administrative Company (USAC) rescinding funding already committed to Youthbuild under the E-rate program (more formally known as the schools and libraries universal service support program).¹ USAC determined that Youthbuild failed to show that it had paid its share of the price of one of the E-rate services it purchased.² We find that Youthbuild has provided documentation that may confirm such a payment. We therefore remand the underlying application to USAC to review the documentation submitted by Youthbuild and determine whether that documentation demonstrates that Youthbuild paid its share for the E-rate services at issue. If it does, USAC shall discontinue recovery actions against Youthbuild. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the documentation and discontinue its recovery action against Youthbuild, if so warranted, no later than 60 calendar days from the release date of this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible

¹ Letter from Chris Quintanilla, on behalf of Youthbuild Columbus Community School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 12, 2006). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. See 47 C.F.R. § 54.719(c).

² See Letter from USAC, Schools and Libraries Division, to Chris Quintanilla, on behalf of Youthbuild Columbus Community School (dated Dec. 8, 2003) (USAC Appeal Decision); Letter from USAC, Schools and Libraries Division, to Gil Barno, Youthbuild Columbus Community School, at 6 (dated May 30, 2006) (Notice of Improperly Disbursed Funds Letter).

schools and libraries may apply for discounts for eligible services.³ USAC examines applications for discounted services, including auditing some applications after funds have been disbursed, to ensure that applicants have followed all program rules, including the rule that requires applicants to pay the non-discounted portion of the price of E-rate services.⁴ When an audit or investigation provides information showing that a beneficiary or service provider has failed to comply with the statute or Commission rules and, thus, that universal service funds were disbursed improperly, the Commission requires USAC to recover such funds.⁵

3. *Request for Review.* In December 2003, USAC granted Youthbuild a funding commitment of \$363,062.69 for 5 purchases for funding year 2003 – including \$335,436 for internal connections from Nullenium Computer Consultants and \$2,780.89 for telecommunications services from SBC Ohio.⁶ On March 31, 2005, as part of an ongoing site review program, BearingPoint, working under contract with USAC, conducted a site visit at Youthbuild focusing on the Nullenium purchase.⁷ BearingPoint claims that at that visit, it asked Youthbuild for, among other things, documentation, i.e., cancelled checks, showing that Youthbuild had paid the non-discounted portion of the price of the E-rate services for funding year 2003, and that Youthbuild promised to fax the documentation to BearingPoint.⁸ On April 14, 2005, after the cancelled checks had not been received, USAC states that it spoke with Youthbuild, and Youthbuild promised to send the documentation to USAC by April 18, 2005.⁹ USAC reports that on April 19, 2005, Youthbuild called BearingPoint to indicate that it was completing the assembly of the documentation requested by BearingPoint.¹⁰ YouthBuild does not claim that it ever submitted the cancelled checks to BearingPoint.

4. On May 30, 2006, USAC sent Youthbuild a commitment adjustment letter seeking to recover \$2,780.89 USAC had disbursed to Youthbuild for telecommunications services.¹¹ The letter stated that “[d]uring the course of a site visit it was determined that the applicant did not pay any of the non-discounted portion” of the E-rate service purchase.¹² It stated that applicants that do not pay the non-discounted portion of their E-rate purchases within 90 days have violated E-rate program rules.¹³ In a July 29, 2006 appeal to USAC, Youthbuild stated that no determination of non-payment “was or should have been made during the course of any site visit, as there was no evidence to support such a

³ 47 C.F.R. §§ 54.501-54.503.

⁴ 47 C.F.R. §§ 54.523.

⁵ See, e.g., *Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004).

⁶ Letter from USAC, Schools and Libraries Division, to Gil Barno, Youthbuild Columbus Community School, at 5-6 (dated Dec. 2, 2003). The funding request for Nullenium and SBC Ohio were FRNs 1011977 and 1013282, and were for 90 percent discounts on \$372,770 and \$3089.88 purchases, respectively. *Id.*

⁷ See BearingPoint, Individual Site Visit Report (of BearingPoint’s Mar. 31, 2005 visit to Youthbuild) at 14-15 (Apr. 14, 2005).

⁸ *Id.*

⁹ USAC Appeal Decision at 1-2.

¹⁰ E-mail from Elisabeth Goff, USAC, to Cyndi Beach, USAC (dated Apr. 28, 2005).

¹¹ Notice of Improperly Disbursed Funds Letter at 5.

¹² *Id.*

¹³ *Id.*

conclusion.”¹⁴ Youthbuild also asserted that the 90-day rule had not yet been adopted by the Commission to be relevant to this case, and it also attached copies of some of the checks it says it paid to SBC Ohio during the months of March – June 2004.¹⁵ USAC subsequently denied the appeal because Youthbuild had failed to submit the requested cancelled checks when BearingPoint had conducted the site visit.¹⁶ Youthbuild then filed the instant appeal with the Commission asking the Commission to overturn USAC’s decision to recover the funding already disbursed to Youthbuild, claiming that BearingPoint never requested copies of its cancelled checks for telecommunications services (BearingPoint had only sought cancelled checks for internal connections funding requests) and that it had submitted the cancelled checks in its July 2006 appeal to USAC.¹⁷

III. DISCUSSION

5. We grant Youthbuild’s appeal and remand the underlying application associated with this appeal to USAC for further action consistent with this order. We find that USAC may not have given Youthbuild a fair opportunity to provide cancelled checks to show that it had paid the non-discounted portion of the purchase price of the telecommunications services it purchased from SBC Ohio. As Youthbuild asserts, and as the BearingPoint report indicates, BearingPoint’s site visit was focused on Youthbuild’s purchase of internal connections from Nullemium. We find no evidence that BearingPoint or USAC made it clear to Youthbuild that it sought documentation concerning any of the other four purchases included in Youthbuild’s application number 370891.

6. Although Youthbuild submitted to the Commission cancelled checks made out to SBC Ohio, which it states demonstrate its payments, we are remanding this case to USAC because we are unable to match the checks Youthbuild submitted to the \$308.99 non-discount share of its telecommunications purchases from SBC Ohio. The checks do not seem to track the monthly invoices from SBC Ohio that USAC believes are associated with this purchase, which suggests that Youthbuild may have made other purchases from SBC Ohio during this period. Therefore, we remand this case to USAC to determine whether Youthbuild paid SBC Ohio for the \$308.99 that represented its non-discount share of the \$3,089.88 of telecommunications services it purchased. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the documentation and discontinue its recovery action against Youthbuild, if so warranted, no later than 60 calendar days from the release date of this order.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Youthbuild Columbus Community School IS GRANTED and the application IS REMANDED to USAC for further action consistent with this order.

¹⁴ Letter from Chris Quintanilla, on behalf of Youthbuild Columbus Community School, to USAC, Schools and Libraries Division at 1 (dated July 29, 2006).

¹⁵ *Id.* at 1, attachment B. The cancelled checks are made out to SBC and are in the amounts of \$320.50, \$125.04, \$363.58, and \$264.60. *Id.* at attachment B. The 90-day rule refers to the Commission’s August 2004 holding that beneficiaries should pay the discounted price of eligible services within 90 days after delivery of service. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15816, para. 24 (2004).

¹⁶ *See* USAC Appeal Decision at 2.

¹⁷ *See* Youthbuild Request for Review.

8. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL COMPLETE its review of Youthbuild Columbus Community School's application and DISCONTINUE its recovery action, if so warranted, no later than 60 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau